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No. 76-526

In the Supreme Court of the United States

OCTOBER TERM, 1976

FIRST NATIONAL BANK OF FORT COLLINS, PETITIONER

v.

STATE BANKING BOARD OF COLORADO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, a national bank doing business in Fort Collins, Colorado, seeks review of the court of appeals' holding that a customer-bank communication terminal (CBCT) established by it approximately 2.8 miles from its main office is a "branch" bank within the meaning of the National Bank Act, as amended, 12 U.S.C. 1 *et seq.* Since, with certain exceptions not pertinent here, Colorado state law prohibits branch banking (Pet. App. 22), the effect of this holding is to preclude petitioner from operating its off-premise CBCT.

In holding that the CBCT established by petitioner is a "branch" bank, the court of appeals refused to follow an interpretive ruling issued by the Comptroller of the Currency to the effect that CBCTs established by national banks away from their main and branch offices do not constitute "branch" banks under the National Bank Act. 40 Fed. Reg. 21703-21704, amending 12 C.F.R. 7.7491. The

principal issue presented in this case is thus the same as that presented in several other cases recently before this Court on petitions for writs of certiorari.[1] Following the Court's denial of certiorari in those cases, the Comptroller began to regulate customer-bank communication terminals such as the terminal involved in this case, whenever owned or rented by a national bank, as "branch" banks. See 41 Fed. Reg. 48333.

The same factors that led this Court to deny the petitions in the other cases presenting this issue would appear to apply equally here, and no conflict has subsequently arisen among the courts of appeals with respect to the issue. Accordingly, this case does not appear to warrant review by this Court.[2]

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JANUARY 1977.

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[1] *Bloom* v. *Independent Bankers Association of America*, No. 76-258, certiorari denied October 4, 1976; *Continental Illinois National Bank and Trust Company of Chicago* v. *Lignoul*, No. 75-1900, certiorari denied October 4, 1976; *First National Bank of Chicago* v. *Lignoul*, No. 76-17, certiorari denied October 4, 1976; *First National Bank in St. Louis* v. *Kostman*, No. 76-392, certiorari denied November 8, 1976.

[2] If the Court should grant the petition, however, the Comptroller would support petitioner's position that CBCTs are not "branch" banks within the meaning of the National Bank Act. See the petition for the Comptroller in *Bloom* v. *Independent Bankers Association of America*, *supra*.